

## Application 2023-143 Harmony Energy Solar Farm–Marton Project

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision under section 24 of the FTCA
Date submitted: 28 April 2023	

## Ministry for the Environment contacts

Position	Name	Cell Phone	1 <sup>st</sup> Contact
Principal Author	Stephanie McNicholl		
Acting Manager	Rebecca Perrett	s 9(2)(a)	✓
Acting Director	Lorena Stephen	s 9(2)(a)	

## Introduction

1. The Ministry for the Environment has prepared this report in consultation with the Office for Māori Crown Relations – Te Arawhiti and in accordance with section 17 of the Covid-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. To satisfy obligations under section 6 of the FTCA, you must consider this report before you make any decision under section 24 of the FTCA regarding the application request to refer the Harmony Energy Solar Farm–Marton Project (project) to an expert consenting panel (panel).

## Proposed project

3. The applicant (Harmony Energy Limited) proposes to develop an approximately 120-hectare site into a solar farm development comprising 3 properties located at 122 and 196 Whales Lane and 362 Pukepapa Road, Marton, Manawatū-Wanganui region.
4. The project will involve the construction of approximately 103,000 solar panels, occupying approximately 93 hectares, that will connect to and supply electricity to the National Grid. The solar farm will have an approximate installed capacity of 65 peak Megawatts.
5. A location map is in Attachment 1.

## Essential information

6. The following information is required under section 17(3) of the FTCA for the project area.

FTCA Section	Information required	Detail	
17(3)(a)	Relevant iwi authorities	1	Refer Iwi authorities section below.  <i>Contact details are in Attachment 2</i>
17(3)(b)	Treaty settlements that relate to the project area	1	
17(3)(a)	Relevant Treaty settlement entities	1	
17(3)(c)	Relevant principles and provisions of the Treaty settlements	Details in blue-shaded section below	
17(3)(d)	Groups with a negotiation mandate recognised by the Crown which are yet to commence Treaty settlement negotiations	N/A	
17(3)(d)	Current Treaty settlement negotiations	N/A	
17(3)(e)	Court orders recognising customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 or another Act	N/A – not in CMA	

## Supporting information

### Project details

7. The project site covers approximately 120-hectares of characteristically rural land. The site has frontage to and access from Ihaia Road to the southeast and from Opuia Road to the northwest.
8. The project will comprise
- approximately 103,000 solar panels, occupying approximately 93 hectares
  - arrays and mounting structures, inverter cabinets, and associated infrastructure
  - 28 power stations, two substations and one transformer
  - ancillary buildings, structures and infrastructure (including a storage building, roads, access, security fencing, CCTV poles and other infrastructure)
  - underground electricity cables, including within road reserve to connect to the Transpower substation at 362 Pukepapa Road, Marton
  - restoration and planting of riparian margins of the Tuenui stream.
9. The project layout is in Attachment 3.

## Statutory matters relating to this report

10. No parts of the proposed project will occur in the coastal marine area, meaning:
  - a. pursuant to section 16(1) of the FTCA you are the sole party required to consider this report
  - b. the project is unaffected by the provisions of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) or any other Act pertaining to the grant of protected customary rights or customary marine title.
11. There are no court orders granted under the MACAA or another Act to consider in your referral decision for this project.<sup>1</sup>

## Iwi authorities

### Methodology and information sources

12. This report must identify the relevant iwi authorities for the project, in accordance with section 17(3)(a) of the FTCA. Under section 7(1) of the FTCA, a relevant iwi authority for a referred project means an iwi authority whose area of interest includes the area in which a project will occur.
13. 'Area of interest' can mean different things depending on context and perspective and can be indicative (such as an area identified at the outset of Treaty settlement negotiations), formally agreed (such as in a deed of settlement or memorandum of understanding) or self-nominated. An area of interest can be difficult to define precisely on a map, particularly where a boundary that has been depicted on a small-scale map is scaled up and used precisely in relation to an individual site or property.
14. For the purpose of this report, we have considered information from the following sources as a starting point for identifying iwi areas of interest:
  - a. Te Arawhiti Internal Crown Asset Tracking Tool (i-Cat), an online database that records areas of interest associated with Treaty settlements and Treaty settlement negotiations
  - b. area of interest maps in signed Treaty settlement deeds or other Treaty settlement negotiation documents (including deeds of mandate)
  - c. the Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development – Te Puni Kōkiri (TPK)
  - d. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by TPK, which includes information on rohe (tribal areas) provided by those organisations.
15. Generally, the areas of interest shown on these databases for an iwi or group do not always completely align, and sometimes the differences can be significant. We carefully consider the reasons for such discrepancies, including the reliability or accuracy of the information shown and the local context and decision-making environment, before deciding which areas of interest we consider apply to a project under FTCA process.
16. The FTCA does not specifically define iwi authority but pursuant to section 7(2) of the FTCA, 'iwi authority' has the same meaning as in the Resource Management Act 1991 (RMA): the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

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<sup>1</sup> Section 17(3)(e) of the FTCA requires this report to identify any court orders granted under the MACAA or another Act which recognise, in relation to the project area, customary marine title or protected customary rights.

17. To identify iwi authorities associated with the identified areas of interest, we considered information from:
  - a. the sources noted above including the TKM online directory
  - b. Horizons Regional Council (HRC) and Rangitīkei District Council (RDC) as relevant local authorities.

### **Iwi authorities relevant to project**

18. We have identified Ngā Wairiki-Ngāti Apa Charitable Trust representing Ngāti Apa iwi, via the information sources as the sole relevant iwi authority for the project area.
19. We note in their invited comments, both local authorities identified the same iwi authority.
20. RDC identified Ngāti Apa as mana whenua and as appropriate to confirm iwi and hapū groups and marae. RDC also noted there is a Tūtohinga/Memorandum of Understanding in place between Rangitīkei District Council and Te Tangata Whenua o Rangitīkei.

### **Other iwi authorities which may have an interest in the project**

21. We note in their invited comments, HRC noted the proximity of Ngāti Raukawa, however the site is outside of their area of interest. We note from the information sources that Ngāti Tūwharetoa may have an interest, however this is not supported by any other available information. We recommend including both parties as an 'other' iwi authority which may have an interest.

### **Treaty settlements and Treaty settlement entities**

22. This report must identify the Treaty settlements that relate to the project area and relevant Treaty settlement entities, in accordance with sections 17(3)(b) and 17(3)(a) respectively. We use information relevant to the project area from the iCat online database and [NZ Government Treaty settlements website](#), together with advice from the Office for Māori Crown Relations – Te Arawhiti.
23. Under the FTCA, a Treaty settlement includes both a Treaty settlement Act and a Treaty settlement deed which is signed by both the Crown and the representative Māori group.
24. [Ngāti Apa \(North Island\) Claims Settlement Act 2010](#) is the only settlement of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Ngāti Apa iwi and the Crown on 8 October 2008. [Ngāti Apa \(North Island\) deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.

### **Relevant Treaty settlement entities**

#### ***Post-settlement governance entities***

25. Under the FTCA, a Treaty settlement entity includes a post-settlement governance entity, defined as a body corporate or trustees of a trust established by a claimant group for receiving redress, or for participating in arrangements established under a Treaty settlement Act.
26. We have identified Ngā Wairiki-Ngāti Apa Charitable Trust as the sole post-settlement governance entity associated with the Treaty settlement under the [Ngāti Apa \(North Island\) Claims Settlement Act 2010](#).

#### ***Other bodies recognised or established under a Treaty settlement Act***

27. A Treaty settlement entity is also defined for the purposes of the FTCA as including a board, trust, committee, authority, or other body, recognised in or established under a Treaty settlement Act.
28. No such entity established by the Claims Settlement Act noted above is relevant to the proposed project.

## **Relevant principles and provisions of the Ngāti Apa (North Island) Treaty settlement**

### ***Crown acknowledgements and apologies***

29. As part of all of the identified Treaty settlement, the Crown offers acknowledgements and an apology as part of Treaty settlement redress to atone for historical wrongs, restore honour, and begin the process of healing.
30. The Crown recognises the efforts and struggles of the ancestors of Ngāti Apa (North Island) in pursuit of their claims for justice and redress from the Crown and makes this apology to Ngāti Apa (North Island) and their descendants.
31. The Crown acknowledges Ngāti Apa (North Island) have been raising grievances with the Crown for over a hundred years. The Crown has failed to deal with the long-standing grievances of Ngāti Apa (North Island) in an appropriate way and that recognition of the grievances is long overdue.
32. From 1848 the Crown purchased over 400 000 acres of land in which Ngāti Apa (North Island) held interests. Through these land transactions, Ngāti Apa (North Island) endeavoured to establish a relationship with the Crown.
33. The 1849 Rangitikei–Turakina purchase stated approximately 35 000 acres would be reserved for all of Ngāti Apa (North Island) to collect and settle on. Later native land legislation enabled these reserved lands to pass through the Native Land Court, which awarded land interests to individuals rather than to all the tribe, excluding many Ngāti Apa (North Island) from ownership of the tribal reserve lands. The Crown’s failure to ensure that the arrangements recorded in the 1849 deed were given effect was a breach of the Treaty of Waitangi and its principles:
34. Over 100 000 acres of land in which Ngāti Apa (North Island) held interests was subject to native land laws introduced in the 1860s, in addition to reserves from the Rangitikei–Turakina purchase. The operation and impact of the native land laws, in particular the awarding of land to individual Ngāti Apa (North Island) rather than to iwi or hapū, made the lands that Ngāti Apa (North Island) were able to retain more susceptible to partition, fragmentation and alienation. This contributed to the erosion of the traditional tribal structures of Ngāti Apa (North Island), which were based on collective tribal and hapū custodianship of land. The Crown failed to take steps to adequately protect those structures. This had a prejudicial effect on Ngāti Apa (North Island) and was a breach of the Treaty of Waitangi and its principles:
35. Lands transferred by Ngāti Apa (North Island) for settlement purposes have contributed to the development of New Zealand, and that some of the significant benefits that Ngāti Apa (North Island) expected to flow from its relationship with the Crown were not realised:
36. The cumulative effect of the Crown’s actions and omissions, including Crown purchases and the operation and impact of native land laws, left Ngāti Apa (North Island) virtually landless. The Crown’s failure to ensure that Ngāti Apa (North Island) retained sufficient lands for its present and future needs was a breach of the Treaty of Waitangi and its principles:

37. Today most Ngāti Apa (North Island) live outside their rohe, and that the loss of their traditional lands has impacted on the access of Ngāti Apa (North Island) to resources such as rivers, lakes, forests, wetlands, and traditional walking paths:
38. Ngāti Apa (North Island) have lost control over many of their significant sites, including wāhi tapu, and that this has had an ongoing impact on their physical and spiritual relationship with the land.
39. The Crown profoundly regrets and unreservedly apologises to Ngāti Apa (North Island) for the breaches of the Treaty of Waitangi, and its principles, acknowledged above.
40. The Crown regrets and apologises for the cumulative effect of its actions and omissions over the generations to the present day which have had a detrimental impact on the traditional tribal structures of Ngāti Apa (North Island), their access to customary resources and significant sites, economic and social development, and their physical, cultural, and spiritual wellbeing.
41. Accordingly, with this apology the Crown seeks to atone for its past wrongs, begin the process of healing and make a significant step towards re-building a lasting relationship based on mutual trust and cooperation with Ngāti Apa (North Island).

## **Redress within the Treaty settlements**

### ***Resource management matters***

42. Affording respect to the views of iwi on resource management matters and enabling iwi to meaningfully participate as a Treaty partner in resource management decision-making within their takiwā/area of interest are important ways in which the Crown can give effect to these acknowledgements and apologies.

### ***Other redress of the Treaty settlement***

43. The Treaty settlement does not create any new co-governance or co-management processes which would affect decision-making under the RMA for the project. The proposed project does not directly affect any specific commercial or cultural redress provided by the Treaty settlement.
44. As a general principle, an absence of specific settlement redress does not indicate the absence of an iwi cultural association with ancestral lands, sites, wāhi tapu or other taonga within an area. Local tangata whenua and their representatives would be best placed to advise on such matters in the first instance.
45. Importantly, cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga – regardless of whether or not they are specifically identified in a Treaty settlement – are deemed to be matters of national importance that must be recognised and provided for in decision-making under Part 2 section 6(e) of the RMA.

## **Current negotiation mandates and settlement negotiations**

46. There are no recognised mandates for negotiation of any further historical Treaty claims, or any current or anticipated negotiations for settlement of historical Treaty claims, affecting the proposed project site.

## **Details in this report affect certain provisions of the FTCA**

### **Notices of referral decisions**

47. Under section 25 of the FTCA, you must give notice of the decisions made on an application for referral of a project to a panel, and the reasons for your decisions, to the applicant and anyone invited to comment under section 21 of the FTCA.

48. You did not invite comment on the referral application from iwi authorities or other Māori groups. However, if you decide to refer this project to a panel, the notice of decisions and associated reasons must be given to:
  - a. the relevant iwi authorities and Treaty settlement entities identified in this report
  - b. any other iwi authorities or Treaty settlement entities you consider have an interest in the matter
  - c. any group that is or party to either a joint management agreement or Mana Whakahono ā Rohe under the RMA that relates to the project area.
49. We have identified Ngā Wairiki-Ngāti Apa Charitable Trust as the sole relevant iwi authority and Treaty settlement entity for receipt of the notice of decisions. Contact details are in Attachment 2.
50. We have identified Ngāti Raukawa and Ngāti Tūwharetoa, respectively as an 'other' iwi authority or Treaty settlement entity who may have an interest in the project, for receipt of the notice of decisions, if you decide to refer the project. Contact details are in Attachment 2.
51. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

### **Expert consenting panel membership and invitation to comment**

52. If a project is referred to a panel, the appointed panel must include one person nominated by the relevant iwi authorities under clause 3(2)(b) of Schedule 5 of the FTCA.
53. In the event iwi authorities nominate more than one person, the panel convener must decide which nominee to appoint. The panel convener has discretion to increase the panel membership to accommodate the matters specified in clauses 3(6)(a) – 3(6)(e) of Schedule 5 of the FTCA, which include matters unique to any relevant Treaty settlement Act.
54. A panel must invite comments on a resource consent application or notice of requirement for a referred project from the parties listed in clause 17(6) of Schedule 6 of the FTCA. This includes:
  - a. the relevant iwi authorities, including those identified in this report
  - b. a Treaty settlement entity relevant to the referred project, including an entity that has an interest under a Treaty settlement in an area where a referred project is to occur, and an entity identified in this report
  - c. any applicant group under the MACAA identified in the report obtained under section 17(1).
55. If you decide to refer, we have identified Ngā Wairiki-Ngāti Apa Charitable Trust as the sole relevant iwi authority and Treaty settlement entity for the proposed project, from whom a panel must invite comment.
56. We have identified Ngāti Raukawa and Ngāti Tūwharetoa, respectively as an 'other' iwi authority or Treaty settlement entity who may have an interest in the project. We recommend you direct a panel under section 24(2)(e) of the FTCA to invite comment from each iwi if you decide to refer the project.
57. A panel may also invite comments from any other person it considers appropriate.

### **Provision of cultural impact assessment**

58. Any resource consent application submitted to a panel for determination must include a cultural impact assessment prepared by or on behalf of the relevant iwi authorities, or a

statement of any reasons given by the relevant iwi authorities for not providing that assessment.<sup>2</sup>

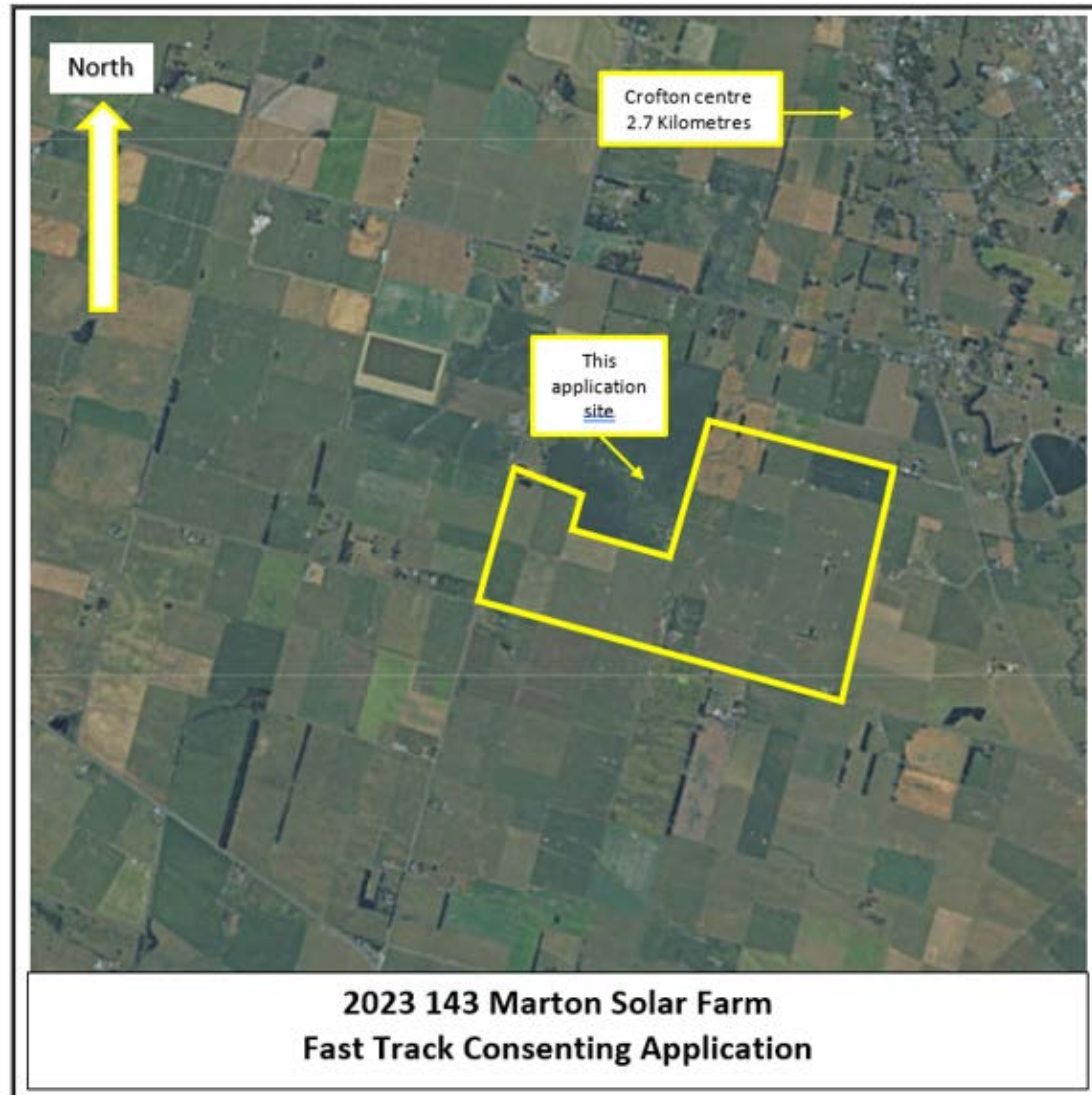
59. The Environmental Protection Authority which provides support services to a panel, will not confirm an application as complete and ready for consideration by a panel until this requirement is satisfied.

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<sup>2</sup> Clause 9(5), 13(1)(k) and 13(1)(l) of Schedule 6 of the FTCA.



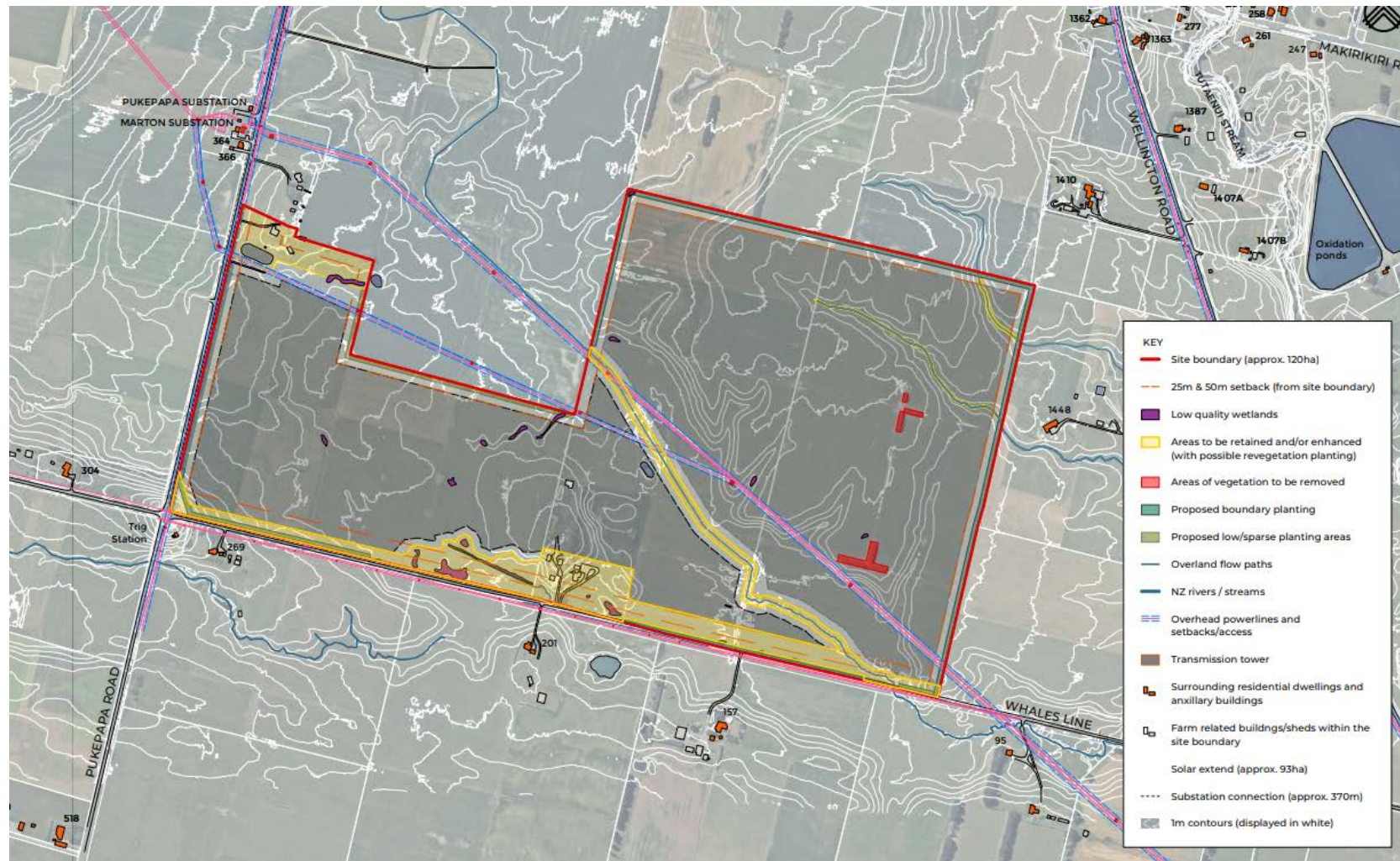
Attachment 1 – Project Location – Surrounding Area



## Attachment 2 – Contact information

Iwi/hapū	Settlement documents / Status	Representative body	RMA relevant iwi authority	Treaty settlement entity (PSGE)	Other iwi authority interest	Contact person
Ngāti Apa	Ngāti Apa (North Island) Claims Settlement Act 2010	Ngā Wairiki-Ngāti Apa Charitable Trust	Iwi authority for RMA purposes	Post-settlement governance entity		CEO: Grant Huwiler s 9(2)(a) [REDACTED] cc: GM Environment – Chris Shenton s 9(2)(a) [REDACTED]
<b>Other iwi authority who may have an interest</b>						
Ngāti Tūwharetoa		Tūwharetoa Māori Trust Board			Other iwi authority may have interest	Chair: John Bishara <a href="mailto:info@tuwharetoa.co.nz">info@tuwharetoa.co.nz</a>
		Tūwharetoa Settlement Trust			Other iwi authority may have interest	Chair: Rakeipoho Taiaroa <a href="mailto:info@tst.maori.nz">info@tst.maori.nz</a>
Ngāti Raukawa		Te Runanga o Raukawa Incorporated			Other iwi authority who may have an interest	CEO/RMA contact: Rārite Mātaki s 9(2)(a) [REDACTED]
		Ngā Kaitiaki o Ngāti Kauwhata Incorporated			Other iwi authority who may have an interest	Chair: Dennis Emery <a href="mailto:kawhata@inspire.net.nz">kawhata@inspire.net.nz</a> cc: Woodward Law (Donna Hall and Lyndon Roger) <a href="mailto:info@mokoia.co.nz">info@mokoia.co.nz</a>

## Attachment 3 – Planned Layout



## Attachment 3 – Perspective

